



## Utah Residential Mortgage Practices Act

by Ted Boyer,  
Executive Director  
Department of Commerce

During the 2000 Legislative Session, House Bill 107, the Utah Residential Mortgage Practices Act (the "Act") was passed in the House by a vote of 63 to 1 and in the Senate by a vote of 27 to 0. Representative Gerry A. Adair sponsored the bill. Representative Adair is both a real estate broker and an appraiser. The Utah Division of Real Estate has been assigned the responsibility of administering the Act.

The Act follows a registration model rather than a licensing model. This means that companies and individuals register with the Division but will not receive a license. Applicants are not required to have pre-registration education or take a competency examination. Applicants are required to be fingerprinted and submit to a criminal background check. They are also required to obtain a surety bond (\$10,000.00 for individuals and \$25,000.00 for entities), obtain a letter of credit or deposit assets of equivalent value. Individuals were required to register beginning July 1, 2000, and entities were required to register with the Division beginning July 1, 2001. For detailed registration instructions, see the Division of Real Estate's website at [www.commerce.utah.gov/dre](http://www.commerce.utah.gov/dre).

Unless a person is exempt under the Act, a person may not transact the business of residential mortgage loans in Utah without being registered under the Act. The business of residential mortgage loans is defined in the Act as making or originating a residential mortgage loan for compensation; directly or indirectly soliciting, processing, placing or negotiating a residential mortgage loan for another or; rendering services related to the origination, processing or funding of a residential mortgage loan including: taking applications, obtaining verifications and appraisals, and communicating with the borrower and lender.

The following, among others, are exempt from the registration requirement: the federal government, a state or political subdivision of a state; an agency created by a government entity such as FHA, Fannie Mae, RTC, etc.; a depository institution, its affiliates or employees; attorneys; and certain individuals acting on their own behalf.

A Residential Mortgage Regulatory Commission has been created. The Commission consists of five members appointed by the Executive Director of the Department of Commerce with the approval of the Governor. Two members are industry members with at least three years of residential mortgage lending experience. Two members are from the general public and the fifth member is the commissioner of the Department of Financial Institutions or the commissioner's designee. Except for the Department of Financial Institutions' representative, each will serve for a term of four years unless otherwise determined by the Governor. The Commission concurs with the Division on registration and disciplinary matters and advises the Division concerning the administration and enforcement of the Act.

The Act specifies that certain prohibited conduct violates the Act and subjects the registrant to disciplinary action, including a fine, revocation, suspension or probation. Such activities as charging excessive fees, giving things of value for referrals, attempting to influence the independent judgment of appraisers and making false statements or representations to induce a lender to extend credit are all prohibited by the Act.

You may read House Bill 107 by going to the State Legislature web site at [www.le.state.ut.us](http://www.le.state.ut.us), or see Utah Code Annotated 61-2c-101 et. seq.

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## Meet the Mortgage Regulatory Commissioners

### **David C. Luna, Chair**

Mr. Luna began his career in residential mortgage lending

in 1980 in Los Angeles, California, working for Melon Bank. While going to BYU, he worked for the Lockhart Company (a Zion's Bancorp Company) until 1984. After receiving his education from BYU, he returned to Los Angeles and worked for Great Western Savings as a branch manager and area supervisor (for 9 S & L branches from Los Angeles to Santa Barbara). Mr. Luna returned to Utah to rear his family, working at Family First Federal Credit Union.

Mr. Luna has been working in the mortgage industry in production or supervisory positions for several companies, responsible for loan volumes in excess of 300 to 400 loans per month and annual loan production volumes of over \$200 million. He estimates that he has closed over 5,000 loans over his 21-year career.

Mr. Luna has been with his sweetheart for almost 24 years. They have two children at BYU and four still at home. He was the president of the Utah Mortgage Broker's Association and one of the founders of the Utah Mortgage Lender's Association. He has been active in community affairs with the Provo-Orem Chamber of Commerce, the Boy Scouts of America, as a volunteer for the Salt Lake 2002 Olym-

pics since 1999. He was recently appointed by Governor Leavitt to the State of Utah Hispanic Advisory Council and currently is the Chair for the Utah Residential Mortgage Regulatory Commission.

owner of Axiom Financial, Inc., a Utah mortgage lending corporation with seventeen branches throughout the state. With an "absolute commitment to excellence," Axiom was created in November 1996 to provide exceptional customer service and convenience to home buyers. It was sold in July 2001 to Cndant Mortgage, one of the largest mortgage companies in the U.S. Mr. Morley led the organization to become the 13<sup>th</sup> fastest-growing corporation in the State of Utah in 2000 with a cumulative growth rate of 4,200% in its five-year history.

Mr. Morley was recently named a finalist for the 2001 Ernst & Young Entrepreneur of the Year Award. Previous to his Axiom venture, he was a Regional Manager for Franklin Covey, where he consulted such Fortune 500 firms as Chevron, General Motors, and First Union National Bank. Mr. Morley holds a degree from Brigham Young University in Psychology, and Business Management.

### **Barbara Soriano**

As one of the two lay members of the Residential

Mortgage Regulatory Commission, Barbara R. S. Soriano brings with her a wide background in health and education projects with diverse populations. After graduating with a liberal arts major in English and secondary education minor from Pennsylvania State University, she went back home to Washington, D.C., and taught in a rural area of Maryland.

From there, Ms. Soriano moved to Michigan, working as director of a grant at Michigan State University, where she coordinated the development of language and science materials for kindergarten and elementary students. She also worked in the Model Cities program in Flint, Michigan, working with seniors, Hispanics, and African Americans in housing projects and in one of the first HMOs in that region. She then was employed by Michigan Department of Education as an evaluator of federal and state education programs and in the adult education division.

In the 1980's she moved with her husband back to Washington, DC where she was a consultant in a technological and economic forecasting firm and was co-author of a book published in 1984 by McGraw-Hill, called Schools of the Future. During this time, she and her husband enjoyed taking their young son and daughter to the many nearby his-

toric museums and battlefields.

Her penchant for wandering to nearby historic sites has continued as her family moved to Utah in 1990. Quite contrary to her own upbringing, both of her children now believe that summers are lost without a good many weekends being spent outdoors.

Ms. Soriano has earned a master's degree from Utah State University in the Research and Evaluation Methodology program of the Psychology Department. Her work experience here in Utah has included grants work with special education students on the Navajo reservation, a three-year fellowship received for helping to develop computer-assisted testing for the Graduate Record Examination, and work at the University of Utah as a director of the internal continuing medical education programs.

She has found her work with the Commission to be energizing. The staff of the Real Estate Division always brings to the table a willingness to consider the range of Commission member viewpoints.

### **Charles C. Howard**

Mr. Howard served 21 years in the Army and retired as a major. He served 3 tours of duty in Korea. One tour was during hostilities where he received 3 Purple Heart awards and was a Prisoner of War.

After his retirement from the Army, he enjoyed another 20 years in property management. The highlights of this career were 3 years as manager of East Canyon Resort and 2 years as manager of Kimball Condominium Resort in Salt Lake City.

Mr. Howard graduated from the University of Nebraska, majoring in Political Science, with a minor in Real Estate Management. In 1984 he returned to college and studied Hotel/Resort Management.

At the present, he is retired and enjoying it. He serves on the Residential Mortgage Regulatory Commission as a volunteer member.

### **Ken D. Goddard**

Mr. Goddard was born and raised on a ranch in Malad, Idaho, and currently re-

sides in Bountiful. He was drafted into the United States Army, and served from 1964 to 1966. He graduated from Brigham Young University in 1971 with a degree in business, plus minors in economics and accounting. He has been employed by the Department of Financial Institutions since 1972. During his early years with the Department, he examined credit unions, banks, trust companies, and savings and loan associations. In 1990, he was appointed to his present position as the Supervisor of Consumer and Mortgage Credit for the Department, having regulatory authority over the

Utah Consumer Credit Code and the Mortgage Lending and Servicing Act. He serves on the Commission as commissioner from the Department of Financial Institutions.



### **Utah Real Estate Mortgage Monitor**

**Purpose:** To provide information and education to the residential lending community which will help them be successful in competently serving Utah consumers.

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*Vice Chairman*--Rod Morley  
*Commissioners*--Barbara Soriano,  
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## What in the World is Flipping?

by Ted Boyer,  
Executive Director  
Department of Commerce

At a recent meeting of the Association of Appraiser Regulatory Officials, Jerry R. Jolly, Acting Director of the California Office of Real Estate Appraisers, John S. Brennen, Chief of Licensing and Enforcement for California and Larry Disney, Chief Investigator for the Kentucky Real Estate Appraisers Board presented an excellent and informative program on flipping.

A flip was defined as “A fraudulent real estate transaction, where a property is bought, then sold again at a greatly exaggerated price.” Additional definitions are: “In flipping schemes, properties are quickly bought and sold and the value of the property is artificially inflated through the use of improper appraisals. Flipping schemes are characterized by non-arms length transactions between business partners.” (Star Tribune, Minneapolis, Mn.); “The flipping scheme involves legitimate initial purchases of (property), followed quickly by non-arms’ length sales at inflated values to related or affiliated parties associated with the initial purchase.” (The Commercial Appeal, Memphis, Tn.)

To illustrate their point, the presenters used actual sales histories of flipped properties. One sales history looked like this:

07/19/96: REO purchase	\$262,000
10/21/97: List price	\$385,000
01/22/98: Amended list price	\$375,000
05/02/98: Purchase contract	\$370,000
07/27/98: Closed escrow	\$370,000
08/18/98: List price	\$625,000
08/31/98: Purchase contract	\$622,000
09/04/98: Appraisal	\$622,000
12/03/98: Closed escrow	\$622,000
12/03/98: Trust deed	\$495,000

You might ask, “How can they do this?” Actually, a number of techniques are used, each of which involves a fraudulent appraisal. Typically, a straw buyer poses as the real buyer, preferably someone with good credit. After the final flip, the straw buyer is either paid a flat fee or shares in the excess proceeds of the purchase money mortgage. Occasionally, the straw buyer pretends to be someone else after stealing that person’s identity. Sometimes the flip is an

“inside job” with the escrow, title, or mortgage company manipulating the transaction. Frequently, the subject property is located in an area of moderately priced homes with pockets of higher priced homes, facilitating the availability of higher comparable sales information near the subject.

The common thread in all of these techniques is the involvement of an appraiser. Sometimes the appraiser is complicit. On occasion, a forged appraisal is used. Sometimes an innocent appraiser is duped into participating in the fraud. For example, the appraiser may lack geographic competency. Or, the client may offer an exorbitant fee for a rush job for which the client furnishes comparable sales information to support the pushed value conclusion. Sometimes the appraiser is motivated by the promise of future work to look for comparable sales information that supports the value sought rather than the actual value of the property.

The purpose of this article is not to teach people how to participate in fraudulent flipping, but rather, to make you aware of the problems and temptations in the market place and to help you recognize a problem when you see it. If you are suspicious about a transaction, ask yourself the following questions:

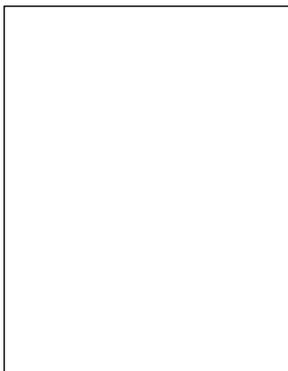
- Is the sales price significantly higher than the list price?
- Is the appraised value in line with recent comparable sales in the neighborhood?
- Has the home sold recently for a significantly lower price?
- Is the subject home located in an area of moderately priced homes with pockets of higher priced homes and overvalued?
- Is the home being transferred among related or affiliated parties?
- Has the property traded several times within a short period of time?

It is still perfectly legal to buy a property at a good price and resell it at a profit. It is only when elements of fraud enter the picture that people get into trouble and cause trouble for others.

*This article was originally published in the July 2000 Utah Real Estate News and the July 2000 Utah Real Estate Appraiser Review.*



## Meet Dexter L. Bell – Real Estate Division Director



The Division of Real Estate and the Residential Mortgage Regulatory Commission welcome Dexter Bell as the Division Director. On April 11, he replaced Ted Boyer, who has been appointed as Executive Director of the Department of Commerce, the Division's parent agency. In that position, Ted is now a member of Governor Leavitt's cabinet.

Bell graduated from the University of Utah with a J.D. degree in 1980. He practiced real estate and business law as an attorney for Q Lube/Pennzoil in Salt Lake City for the past several years. Before that, he served in several appointed federal positions with the Reagan and (first) Bush administrations in Washington D.C. He was Deputy chief of staff at the Federal Home Loan Bank Board and at the Office of Thrift Supervision in the U.S. Treasury Department. He also served under Chairman Jake Garn as Legal Counsel to the U.S. Senate Committee on Banking, Housing and Urban Affairs.

Bell's focus is on closing older complaint cases expeditiously, and on providing for on-line renewal by the year 2002.

Bell is married with five children. He enjoys reading history, playing basketball, and watching college sports.

Bell's 10 years of experience in appointed political positions in the federal government served to convince him of the importance of appropriate government regulation: not having too much or too little. For example, the thrift institution crisis came about because of perhaps too much government regulation in the first place (on what thrifts could invest in), and then after that, too little regulation. His experience with the thrift crisis also impressed on him the need for fair and accurate appraisals, in order to protect our economic system and the integrity of financial values.

Bell believes that residential mortgage lenders in Utah are quickly adapting to and conforming with the new regulations. He will strive to maintain that balance between having enough regulation, but not too much. "Enough" would be defined as sufficient regulation to protect the public, as well as other lending professionals, from unethical and illegal practices. He is impressed with the competence and dedication of the Mortgage Regulatory Commissioners in the Commission's attempts to strike that regulatory balance. He also recognizes the need to step outside the perspective of the legal profession and see issues from all sides, including that of the public and the residential lending profession.

## HUD Works on Predatory Lending Defense

(WASHINGTON) HUD has announced new consumer protection initiatives to prevent families who receive FHA-insured mortgages from being victimized by predatory lending practices.

New protections include restructuring inflated mortgages, default counseling for FHA borrowers, denying FHA insurance to FHA homes that have been "flipped" at inflated prices, placing caps on the points and fees charged FHA borrowers, deploying special teams to pursue unscrupulous appraisers and lenders, removing appraisers involved with large numbers of foreclosures, and imposing tighter FHA down-payment rules.

HUD says the "explosive growth" in predatory lending has led to new schemes by which FHA homeowners are being defrauded. "Our new Fraud Protection Plan will help those already victimized and help rid the housing marketplace of these abusive and predatory practices," said a HUD spokesman.

*Reprinted with permission from Real Estate Intelligence Report, May 22, 2000.*

## When is a Refinance NOT a Refinance?

by Ted Boyer,  
Executive Director  
Department of Commerce

In today's competitive mortgage market, and with the real estate market still good, but flat, some lenders are becoming quite creative in generating new markets and new business. Much has been said and written about various fraudulent techniques to make "B" and "C" paper loans appear to be "A" paper loans. We are now seeing a variation on that theme – sometimes called the "Quit-claim Refinance Purchase."

Here's how it works. We typically see this approach in circumstances where the borrower either does not have a significant down payment, or has no down payment at all. Once a property is under contract, the seller conveys the property to the buyer by quit-claim deed prior to closing. Simultaneously, the buyer signs another quit-claim deed (or warranty deed, or, sometimes, an all-inclusive-trust deed) back to the seller, with the understanding that if the transaction does not close within a limited time period, the deed from the buyer back to the seller is recorded, conveying title to the property back to the seller. And, of course, there are many other variations on this theme. The buyer obtains some sort of interest in the subject property, but is certainly not the "owner" in the conventional sense of the word.

When the lender (or the purchaser of the loan on the secondary market)

obtains the preliminary title report, which falsely indicates that the buyer is the owner of the property, the lender is deceived into thinking that the buyer is actually the owner and that the loan being made is for a refinance rather than an original mortgage. And, as opposed to an original mortgage where the loan-to-value ratio requires a higher down payment, in a refinance the loan-to-value ratio is less stringent. And in some cases, when coupled with an inflated appraisal, the



borrower is able to finance 100% (or, in some cases, more than 100%) of the purchase price of the property.

Another advantage to the buyer is that the lender, thinking this is a refinance loan with a seasoned borrower (and thereby less risky), may not require private mortgage insurance. Even those lenders who do not require seasoning for a refinance, may presume that they are, at least, dealing with an existing owner who has previously qualified to purchase the property.

Fannie Mae's definition of a refinance is "A refinance transaction involves the repayment of an existing debt from the proceeds of a new mortgage that has the same borrower and the same security property." The transaction described above involves the same property, but not the same borrower. The proceeds of the so-called "refinance" are used to pay off

the loan taken out by the seller, not the borrower.

Utah Code §61-2c-301(1)(d) prohibits making a false statement or representation for purposes of inducing a lender to extend credit as part of a residential mortgage loan transaction. If a real estate agent or broker or an appraiser is involved in this scheme, the actions may also be violating Utah Code titles 61-2a and 2b.

In addition to legal problems with the above scheme, there are potential practical problems. For example, once title to the seller's property is conveyed by quit-claim deed to the buyer/borrower, there is the distinct possibility that any judgments, liens, or encumbrances against the borrower would attach to the seller's property. If the transaction does not close, and title is revested in the seller's name, those judgments, liens, and encumbrances might well remain on the title to the seller's property.

What are the risks to the various parties involved in the above types of transactions? The mortgage company and its representatives, the appraiser, the entity closing the transaction, and any real estate agents or brokers involved, together with the buyer and seller, may have violated state or federal law. The seller risks encumbering his property with liens or judgments against the buyer/borrower. The secondary mortgage market purchaser of the loan has assumed much more risk than antici-

pated by thinking it is purchasing a refinance by a seasoned borrower, with a substantial equity cushion. The purchaser of the mortgage might not have private mortgage insurance. Any licensed or registered individuals involved have probably violated the Utah Residential Mortgage Practices Act and other professional licensing statutes, and could lose their professional license or registration.

*This article was originally published in the February 2001 Utah Real Estate News.*

### *Did You Know?*

The Utah Division of Real Estate currently has approximately 3,786 Mortgage Lenders and 702 Mortgage Entities registered. Registration with the Division for individuals and entities became **mandatory** under the Utah Residential Mortgage Practices Act in July 2000 (for individuals) and July 2001 (for entities). A database of those registered is available on the Division's web page at: [www.commerce.utah.gov/dre](http://www.commerce.utah.gov/dre).

## New RESPRO Guide Helps Avoid RESPA Violations

The Real Estate Services Providers Council (RESPRO) has published an updated RESPA guide for real estate sales associates, loan officers, mortgage brokers, title agents, and other front-line salespersons.

According to RESPRO Executive Director Sue Johnson, the book, RESPA Guide to Referral Fees: Do's & Don'ts for Salespersons, is a response to increased marketplace confusion over what referral activities are and are not allowed under the Real Estate Settlement and Procedures Act.

"Many of our members' employees and real estate agents associates have been bombarded by offers of fees, part-time employment, chances to win prizes, and other incentives in exchange for referrals," said Johnson, who noted the trend has particularly increased since the advent of the Internet.

"We updated our RESPA Guide to help our members and others in the industry, with their legal counsel, to educate their front-line salespersons about which offers are and which are not covered under the Act."

RESPA was first passed in 1974 to prohibit "kickbacks" for the referral of home buying and financing services. The law is currently being rewritten, but a consensus had been difficult to find in the rapidly evolving financial services arena.

RESPRO has been consistently at the forefront of working with HUD and Congress on what a new RESPA should look like.

The RESPRO guide describes RESPA's basic prohibitions and penalties for non-compliance. It also describes real-life scenarios involving incentive offers – in both the paper-based and the Internet world – and comments on whether the offer described in each scenario violates RESPA.

The guide is available from RESPRO headquarters: (202) 408-7038 or by e-mail at: [respro@erols.com](mailto:respro@erols.com).



## Disciplinary Sanctions

### Mortgage

CUTLER, ALAN G., Legacy Mortgage. Registration approved on probationary status until first renewal because of a censure by, and six month bar from membership in the New York Stock Exchange.

MYERS, KIRK T., Draper. Agreed that his application for registration would be denied and that he would not apply again for registration for at least five years rather than continue to respond to the Division's investigation of a complaint filed against him. Mr. Myers admitted the facts of the complaint, which were that he falsified a borrower's employment and income, causing New Freedom Mortgage to make a loan it would not otherwise have made. Specifically, it was represented in the loan application that the borrower worked for "Pacific West Companies" making \$70,200.00 per year when she actually worked for the Jordan School District making \$16,377.00 per year. #MG01-08-23

TRASK, DONALD F., Salt Lake City. Approved for registration on probationary status on the condition that he pay a \$5,000.00 fine owing to the Louisiana Board of Chiropractic Examiners in connection with an action against his Louisiana chiropractic license. Mr. Trask has requested agency review of the conditions placed on his registration.

### Real Estate

BABCOCK, MIKE W., Inactive Sales Agent, Morgan. License renewed on probationary status due to a misdemeanor conviction since his last renewal. Until his next renewal, Mr. Babcock will be required to notify any broker with whom he licenses about his misdemeanor conviction.

C-21 AT THE ROCKIES and CENTURY 21 MARKETING AND RESEARCH, American Fork, dba BEACON RESEARCH and BEACON MARKETING RESEARCH, Salt Lake City. Cease and Desist Order issued March 7, 2001 prohibiting the use of unlicensed persons to assist in procuring prospects for real estate transactions. The Cease and Desist Order also prohibited violation of the Utah Residential Mortgage Practices Act by soliciting homeowners and referring prospects for residential mortgage loan business in exchange for valuable consideration. Following the issuance of the Cease and Desist Order all entities contacted the Division and agreed to cease the prohibited activities. #RE01-02-01.

CHRISTENSEN, JOSH, Sales Agent, North Salt Lake. License granted on probationary status due to a misdemeanor

conviction. Until his first renewal, he will be required to notify any broker with whom he licenses about his misdemeanor conviction.

DIMOND, ANGELIQUE V., Sales Agent, Grantsville. Conditional real estate license revoked on November 30, 2000 after the criminal background check required of new sales agents revealed that she failed to disclose several misdemeanor cases on her application for a sales agent license. REFP20-13.

FITZGERALD, ROBERT F.; APOSTLE, SAM, APOSTLE, ; and APOSTLE FITZGERALD & COMPANY, Phoenix, AZ. Cease and Desist Order issued January 31, 2001 prohibiting acting as real estate brokers in Utah without Utah licenses. Respondents were marketing the Microtel Inn & Suites Hotel/Motel in Salt Lake City. #RE01-01-01 and RE01-01-15.

FRANCO, LOUIS, Associate Broker, St. George. Consented to pay a \$1,000.00 fine and have his license placed on probation for one year based on a transaction in which he failed to supervise a sales agent while he was the principal broker of C-21 Zion Realty in St. George. The sales agent receipted \$30,000.00 earnest money which she did not have in hand. When the check was later received, it failed to clear. The Division alleged that the sales agent failed to inform the seller's agent that the check did not clear. The sales agent maintained that the title company did not tell her the check had failed to clear. #RE99-05-03.

HALLS, DALE SCOTTY, Sales Agent, Orem. After a formal hearing, Mr. Halls' license was suspended for nine months beginning October 30, 2000 and placed on probation for one year thereafter, based on conviction of a criminal offense involving moral turpitude in a transaction which was not related to real estate. He was also fined \$500.00 and ordered to complete remedial education. #RE97-03-06.

HAWS, JOAN A., Inactive Sales Agent, formerly licensed with C-21 Zion Realty, St. George. Consented to pay a \$2,000.00 fine and have her license placed on probation for one year. Ms. Haws receipted earnest money although she did not have a check in hand. When she later received the buyer's \$30,000.00 check and delivered it to the title company, it failed to clear. The Division alleged that Ms. Haws was informed that the check had failed to clear and that she failed to inform the seller's agent. Ms. Haws claims that the title company did not tell her that the check had failed to clear. #RE97-06-12.

HULL, MATHEW J., Sales Agent, West Jordan. Conditional real estate sales agent license revoked, effective January 25, 2001 after the criminal background check required of new sales

agents revealed that he failed to disclose past and pending misdemeanor cases in his application for a sales agent license. #REFP-01-01.

HUNT, TERRANCE; WIMBUSH, GRANT; and GRUBB & ELLIS DENVER OFFICE. Cease and Desist Order issued January 24, 2001, prohibiting acting as real estate brokers in Utah without Utah licenses. Respondents solicited Utah residents by direct-mail advertising to purchase an apartment complex located in Colorado. #RE01-01-10 and RE01-01-11.

JONES, WILL, Principal Broker, Pine Valley Realty, Alpine. Consented to pay a \$1,000.00 fine and have his license placed on probation for one year during which time he may not manage others' property. The disciplinary action was based on failure to supervise rental property management. A Division audit found no individual ledgers, no check register with current balances and transaction numbers, and no trust account reconciliations. #RE97-04-01.

KIFER, MERVIN A., Sales Agent, Riverton. License renewed on probationary status due to minor misdemeanors since his last license renewal.

KNUDSEN, EMIL K., Associate Broker, Orem. Consented to a one-year license probation based on conviction of a misdemeanor and to a \$300.00 fine for failing to disclose the pending case on his application for renewal. In mitigation of the failure to disclose, Mr. Knudsen did report the case to the Division after conviction. #RE20-12-05.

LUTUI, ILAISAANE F., Sales Agent, West Valley City. License renewed on probationary status due to misdemeanor conviction since her last license renewal.

MACEY, MARTIN W., Certified Instructor, Sandy. Application for renewal of instructor certification denied on February 23, 2001, based on violation of the administrative rules governing instructor certification by giving students continuing education certificates for a course which was certified for live instruction although no classroom instruction had been provided.

MACKAY, RICHARD, Sales Agent, Salt Lake City. Conditional license revoked on Dec. 4, 2000 after the criminal background check required of new sales agents revealed that he had failed to disclose misdemeanor convictions. After a post-revocation hearing, the Commission and the Acting Director concluded that Mr. Mackay had no intention to deceive on his application. His license was reinstated effective March 21, 2001. #REFP20-14.

MUNFORD, DAVID, Principal Broker, Impression Group Referral Real Estate, LLC, Midvale. Consented to pay a \$200.00 fine, based on violating Administrative Rule R162-6.1.9 by offering a \$50.00 gift certificate to homeowners for referral of a

prospect which resulted in a real estate transaction. Mr. Munford maintains in mitigation that he did not understand that the administrative rule on "token gifts" which allows a "thank you gift" applies only to unsolicited referrals of prospects. #RE20-08-15.

NIELSEN, ELWOOD L. "LES", Principal Broker, Real Estate One, Inc., Sandy. Application for renewal denied on April 20, 2001, based on losing control of a transaction and failing to meet his fiduciary duty to his client, and on demonstrating error in judgment, dishonesty and a lack of forthrightness. Mr. Nielsen has requested Agency Review of the denial of his renewal.

OLCH, JONATHAN, Principal Broker, Bald Eagle Realty, Inc., Park City. Consented to pay a \$500.00 fine based on an admission of a technical violation of Administrative Rule R162-6.1.5.8 by advertising a property in a 1998 brochure although the listing with the owner had expired at the end of August, 1997. The owner complained to the Division that the property was advertised without his permission and at an outdated price. Mr. Olch maintained in mitigation that he was required to submit a mock-up of the brochure to the printer while the listing was still in effect, that he was led to believe that the owner would sign a new listing, and that his office manager concealed from him the fact that a new listing had not been signed as part of her broader scheme to embezzle over \$40,000.00 from him, a crime for which she was subsequently convicted. #RE99-05-10.

PROCTOR, H. SCOTT, and COLDWELL BANKER COMMERCIAL ETN, Las Vegas, NV. Cease and Desist Order issued January 23, 2001 prohibiting acting as real estate brokers in Utah without Utah licenses. Respondents advertised the Super 8 Motel in Clearfield, Utah for sale and sent promotional materials concerning the property to a Utah resident. #RE20-12-14.

READ, KATHY JO, Sales Agent, Prudential 1st Choice Real Estate, Layton. Consented to pay a \$350.00 fine and complete an agency course, based on entering into a buyer agency agreement with buyers while a prior buyer agency agreement with another brokerage was still in effect. Ms. Read maintains that the buyers told her that they would not be using the other agent as their agent on the purchase of the home in question. Ms. Read also failed to obtain informed consent to limited agency. #RE20-10-07.

READ, SCOTT E., Associate Broker, Prudential 1st Choice Real Estate, Layton. Consented to pay a \$350.00 fine and complete an agency course. While he was branch broker, Mr. Read represented buyers on a home listed by his branch without making sure that informed written consent to limited agency had been obtained. He also continued to represent the buyers

## Disciplinary Sanctions

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after he learned that they had been working with an agent in another brokerage without clarifying whether there was a pre-existing Buyer Agency Agreement between the buyer and the other agent. #RE01-01-12.

ROBBINS, DENNIS R., Sales Agent, Salt Lake City. License renewed on probationary status due to misdemeanor convictions on the condition that he finish paying his fines.

ROBERTS, ALISON A., Sales Agent, Salt Lake city. License granted on probationary status due to misdemeanor convictions. Until her first renewal, she will be required to notify any broker with whom she licenses about her misdemeanor convictions.

SCRIBNER, BEN W., Inactive Sales Agent, Salt Lake City. Consented to a three-month suspension of license and payment of a \$500.00 fine based on a misdemeanor conviction and failing to report the conviction to the Division within the required ten days. #RE01-02-17.

SMITH, JANNINE B., Sales Agent, Coldwell Banker Aspen Brook Realty, Vernal. Surrendered her license effective May 18, 2001 and agreed not to apply for a new license for 18 months, with no promise that an application for a new license will be approved. Ms. Smith sold homes to two different couples and signed phony leases with the couples, acting as their landlord, to enable them to collect rental subsidy payments from their employer. She received rent checks from the employer over a total of 29 months, which she cashed and forwarded to the couples to use to make their mortgage payments. #RE97-02-07.

TAYLOR, RANDALL S., Sales Agent, Ogden. License granted on probationary status based on minor misdemeanor convictions. Until his first renewal, he will be required to notify any broker with whom he licenses about his misdemeanor convictions.

TRASK, DONALD F., Sales Agent, West Jordan. License granted on probationary status based on disciplinary action against his chiropractor license in another state and a related criminal conviction. Until his first renewal in January, 2003, Mr. Trask will be required to notify any broker with whom he licenses about his past licensing action and past conviction.

WATKINS, CHRISTOPHER M., Sales Agent, GT Investment Realty, Draper. License renewed on probationary status due to recent actions by the Utah Division of Securities and the NASD based on technical violations. The probationary status ended once his fine was paid to the NASD.

WAYNE, WILLIAM G., Principal Broker, Thomway Real Estate, Salt Lake City. License surrendered effective March 31, 2001. In February, 1992, Mr. Wayne was convicted of Second Degree Felony Sex Abuse of a Child and Second Degree felony Forcible Sexual Abuse in Third District Court Case 911900744. Mr. Wayne thereafter obtained renewal by misrepresenting on his license renewal forms when he answered "No" to the question regarding criminal convictions. The Division learned of the convictions in January, 2001. #RE01-01-07.

WIGGINS, DARRELL L., Sales Agent, Provo. License granted on probationary status based on past misdemeanor convictions. Until his first renewal in January 2003, Mr. Wiggins will required to notify any broker with whom he licenses about his past misdemeanor convictions.

## Appraiser

ALVEY, CODY H., Certified Residential Appraiser, Draper. Consented to pay a \$1,000.00 fine and agreed not to supervise other appraisers or sign as the certified appraiser for other appraisers for two years from February 13, 2001, based on having signed as the certified appraiser on two appraisals without researching the listing and sales histories on the properties. #AP20-11-10.

CLOWARD, STEVEN, Certified Residential Appraiser, Orem. Consented to pay a \$2,000.00 fine and take a USPAP course, in settlement of cases which involved appraisals performed while he was a registered appraiser. In one case, he did not have adequate file data to support his adjustments and conclusions in a summary report. In the other case, his report contained numerous factual errors and internal inconsistencies. Mr. Cloward maintained in mitigation that the errors and omissions were unintentional careless mistakes and that he had no intent to mislead. #AP98-11-06 and AP97-07-18.

DENSLEY, DALE, State-Registered Appraiser, Mapleton. Consented not to apply for certification for one year, to pay a \$2,500 fine, and to complete remedial education in settlement of two complaints involving appraisals that violated USPAP. In one appraisal, he failed to disclose that he lacked knowledge and experience in appraising manufactured homes and knowledge and experience regarding the market in the area. In the other appraisal, he failed to verify listing history or the party who held title to the property. In mitigation, Mr. Densley maintained that his errors were unintentional mistakes and that he had no intent to mislead. Mr. Densley has been approved for State-Licensed Appraiser status, effective May 24, 2001. #AP99-04-39, #AP20-10-01.

HATCH, RAYMOND T., Certified General Appraiser, Salt Lake City. After a formal hearing, Mr. Hatch's certification was revoked effective Jan. 9, 2001, based on making repeated material misrepresentations to the Division. Mr. Hatch failed to disclose

past criminal history on his original application for certification and failed to disclose new criminal cases on each of two subsequent renewals. #AP20-02-12.

HODGES, JULIE, Registered Appraiser, Murray. Consented to pay a \$1,000.00 fine and to withdraw her application for certification, based on appraisals on two different properties in which she overlooked listing history or previous sales history. As part of the settlement, Ms. Hodges agreed not to submit a new application for certification for at least two years from February 13, 2001. #AP20-11-09.

JONES, KENNETH F., Certified General Appraiser, Salt Lake City. Renewal denied on February 13, 2001, based on: 1) a continued pattern of failure to supervise junior appraisers and failure to verify information, even after complaints had been brought to his attention; 2) multiple examples of lack of competency and multiple misleading reports; and 3) failure to acknowledge the potential harm to his clients and the public as a result of misleading appraisal reports.

KOPLIN, RICHARD, Certified Residential Appraiser, Salt Lake City. Consented to pay a \$1,000 fine, based on violating USPAP by making a series of errors that, although individually might not significantly affect the results of the appraisal, in the aggregate affect the credibility of the appraisal. Mr. Koplin used comps which were distant from the subject, reported incorrect information on comparable sales, and incorrectly weighted one of the comps. The errors did not affect the value conclusion. In further mitigation, he resisted great pressure from the buyer of the home to inflate the appraisal. #AP20-05-06.

LARSEN, ALLEN G., Registered Appraiser, Woodland Hills. Consented to pay a \$500.00 fine and complete a 15-hour USPAP class based on a deficient appraisal report completed when he was a new appraiser. In mitigation, Mr. Larsen maintains that since the time of the appraisal in question, he has worked under the supervision of a different certified appraiser who has provided better training, input, and structure to his appraisals. #AP98-12-23.

RAWLE, MATTHEW C., Registered Appraiser, Provo. Registration reinstated on probationary status due to a misdemeanor conviction. The probationary status will last until Mr. Rawle pays his fine in the criminal matter.

## HUD Wants Earlier, More Complete Mortgage Disclosures

(WASHINGTON) – In a statement important to real estate companies involved in mortgage brokering, Housing Secretary Mel Martinez said on Monday, October 15, 2001, he is going to insist on earlier and more complete disclosure of costs and fees associated with the loan process.

He also said, however, he would urge the courts to look at consumer complaints on a case-by-case basis – apparently hoping to blunt class-action lawsuits involving yield spread premiums that could cost the mortgage brokering industry billions of dollars.

Martinez angered some consumer groups by reiterating that yield spread premiums are an important element in the mortgage business and that many low-income Americans would be able to buy homes without them.

But he also condemned abuses by which junk fees were being tacked onto mortgages where no services were being performed.

“At closing, too many American families sit down at the settlement table and discover unexpected fees that can add thousands of dollars to the cost of their loan,” Martinez said. “They are not told who is getting their money, or what services they are receiving in return. Because this is thrust upon the buyers at the last moment, they have no opportunity to determine whether these extra costs are at all reasonable.”

Martinez is calling for:

- Full, up front disclosure of all costs associated with obtaining a home loan in understandable terms prior to the payment of non-refundable fees. Those disclosures would include the specific services to be performed by the mortgage broker, a statement of whether the mortgage broker is acting as an agent for the borrower, and the amount of the total compensation to the mortgage broker, including any yield spread premium paid by a lender.
- Clarification and explanation of yield spread premiums in order that borrowers know as early as possible what their settlement costs will be, so that they can shop for the best loan option.

RESPA and the yield spread premium issue have become a heightened concern in the past few years as federal courts have interpreted the confusing law in different ways.

Martinez hopes HUD’s clarification will establish uniform policies.

Last year, HUD fielded more than 900 RESPA-related complaints, approximately one-third involving kickbacks and other questionable payments. In response, HUD is dedicating an additional \$1.25 million to investigate RESPA complaints and for additional personnel to handle cases.

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## **Home Buyer's Mortgage Brochure**

For an excellent brochure advising prospective home buyers on how to make informed mortgage credit decisions, please see the Division's website at [www.commerce.utah.gov/dre](http://www.commerce.utah.gov/dre). The brochure is produced by the American Financial Services Association, the American Association of Residential Mortgage Regulators, and the National Association of Consumer Credit Administrators.